

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 295 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements ? YES

2. To be referred to the Reporter or not ? NO

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? NO

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil  
Judge ? NO

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M/S INDIAN CONSTUCTION CO.

Versus

RATILAL HAKHCHAND SOLANI  
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Appearance:

MR VJ DESAI for Petitioner

SERVED for Respondent No. 1

MR SR DIVETIA for Respondent No. 2

MR RP BHATT for Respondent No. 3  
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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 24/04/97

ORAL JUDGEMENT

The present Criminal Revision Application is filed against the order of the learned Sessions Judge, Jamnagar in Criminal Revision Application No. 75 of 1986 decided on 18th May, 1988.

2. The respondent No. 1 Ratilal Harakhchand Solani was working as a Cashier with the petitioner-firm. The police had raided the house of said respondent No. 1 Ratilal Harakhchand on getting information that he was carrying out money lending illegally. In the said raid, the police had seized the cash amount of Rs. 1,11,046/= and gold & silver ornaments of Rs. 2,36,875/=. On the completion of necessary investigation, chargesheet was also filed in the Court of learned Chief Judicial Magistrate under the Bombay Money Lenders' Act against the respondent No. 1 Ratilal Harakhchand Solani. The present revision applicant filed Application Exh. 7 on 29th August, 1986 before the learned Chief Judicial Magistrate, Jamnagar contending therein that the amount of Rs. 1,25,000/= was withdrawn by the petitioner-firm by presenting a Cheque to the bank and an amount of Rs. 1,11,046/= which was seized from the custody of Ratilal was out of the said amount of Rs. 1,25,000/= of Cheque No. 867095. They had produced necessary documents in support of their claim. The learned Magistrate after considering the claim of the present revision applicant allowed the said application and ordered to return the said amount to the present petitioner on furnishing a bond for the said amount and on giving an undertaking that if finally the revision applicant is directed to deposit the said amount, the revision applicant should deposit the same. Accordingly, the revision applicant gave a bond and took the said amount.

3. But, the respondent No. 3 i.e., Income Tax Department of Union of India preferred a revision application No. 75 of 1986 in the Court of learned Sessions Judge, Jamnagar seeking an order that the said amount of Rs. 1,11,046/= should be handed over to them as the respondent No. 1 had not disclosed said income to the Income Tax Department and Income Tax department was entitled to seize the same. The learned Sessions Judge was pleased to accept the said contention and he therefore allowed the said revision application by setting aside the order of the learned Chief Judicial Magistrate and directed the present revision applicant to deposit the amount in the court of learned Chief Judicial Magistrate with further direction to the learned Chief Judicial Magistrate to hand-over the said amount to the Income Tax Department.

4. Being felt aggrieved by the said contention, the revision applicant has come before this Court. There is no dispute to the fact that the amount of Rs. 1,11,046/= was seized from the custody of Ratilal Harakhchand Solani, respondent No. 1 alongwith golden and silver ornaments by the police on the allegation that the said property was subject matter of money lending transactions. It is a claim of the present revision applicant that this amount of Rs. 1,11,046/= is not an amount belonging to the respondent No. 1 Ratilal but it was the money belonging to the present revision applicant, remaining in custody of Ratilal, who was working as a Cashier with the petitioner. It is very pertinent to note that when the present revision applicant had made the claim before the learned Chief Judicial Magistrate that the amount belongs to the petitioner and not to Ratilal, Ratilal had supported that the claim of the present revision applicant. It is not possible at this stage to give a definite conclusion as to whether the claim of the revision applicant or the claim of the State that the said amount is the property subject matter of money lending is true or correct claim. Only after full trial, it would be possible for the Court to come to the conclusion as to whether this amount of Rs. 1,11,046/= was the property acquired by Ratilal on account of doing money lending. Only in case the trial Court comes to the conclusion that the said amount of Rs. 1,11,046/= is the property acquired by respondent No. 1 - Ratilal by illegal money lending then alone the claim of the respondent No. 3 i.e. Income Tax Department could be entertained. At this stage, it is not possible to come to a definite conclusion that the said amount is the amount of illegal money lending dealings and that it is the property of respondent No. 1 Ratilal.

5. The order passed by the learned Chief Judicial Magistrate was quite proper and just. The learned Chief Judicial Magistrate has in view of say of Ratilal that money belongs to revision applicant allowed the present revision applicant to get the said amount on a bond and also on a condition that ultimately after the trial he was ordered to return the same, he would return the same. There was no definite final decision that the money was belonging to the present revision applicant. Therefore, in the circumstances, the learned Sessions Judge was not at all justified in interfering with the said order passed by the learned Chief Judicial Magistrate, particularly in view of the fact that the claim of the revision applicant was supported by Ratilal, who was admittedly working as a Cashier with the revision

applicant and who alone could have disputed the claim of the present revision applicant.

6. The learned advocate for the revision applicant had further brought to my notice that the Commissioner of Income Tax-Appeals, Rajkot has passed an order dated 16th May, 1991 and has held that the assessment of the said amount of Rs. 1,11,046/= as the property belonging to respondent No. 1, was incorrect. He further stated at the bar that till this date, the petitioner is not served with any notice of any appeal preferred by the Income Tax Department against the said order passed by the Commissioner of Income Tax (Appeals) on 16th May, 1991. Therefore, in view of that circumstance also, the order passed by the learned Sessions Judge could not be uphold. But any way, as indicated above, the order passed by the learned Chief Judicial Magistrate was quite proper and just in the circumstances of the case and the learned Sessions Judge was not at all justified in interfering with the said order. It is settled principle of law that the revisional court cannot interfere with the order passed by the authority below unless the order is either capricious, illegal or perverse and even if there happens to be possibility of coming to another conclusion to which the original Court has come, the revision Court cannot interfere with with the said findings recorded by the original court unless the said conclusions are either illegal or against the settled principles of law. I, therefore, hold that the present revision application will have to be allowed. I accordingly allow the same. The order passed by the learned Sessions Judge on 18th May, 1988 in Criminal Revision Application No. 75 of 1988 is hereby quashed and order passed by the learned Chief Judicial Magistrate is restored. Rule is made absolute accordingly.

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Prakash\*